

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, : 94-CR-1119 (RR)
: 95-CR-1155 (RR)
:
v. :
: June 28, 1996
LARRY SESSA, et al., :
: Brooklyn, New York
Defendants. :
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE REENA RAGGI
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: ZACHARY W. CARTER, ESQ.
UNITED STATES ATTORNEY
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For the Defendant:
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Sessa EPHRAIM SAVITT, ESQ.
Capaldo MICHAEL GOLD, ESQ.
Savarese NICHOLAS KAISER, ESQ.
Santapeola VINCENT ROMANO, ESQ.
Gargagliano ALAN FUTERFAS, ESQ.
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Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE CLERK: United States versus Sessa, et al.

2 Counsel, we're recording this electronically, so
3 it would be helpful if you identified yourselves for the
4 court reporter.

5 For the United States?

6 MS. CORCELLA: Ellen Corcella and Sung-Hee Suh.

7 THE COURT: For the defendant Thomas McGlaughlin?

8 MR. CUTLER: Bruce Cutler.

9 THE COURT: For the defendant Daniel Capaldo?

10 MR. GOLD: Michael Gold.

11 THE COURT: For the defendant Joseph Savarese?

12 MR. KAISER: Nicholas Kaiser for Richard Levitt.

13 THE COURT: For the defendant Larry Sessa?

14 MR. SAVITT: Ephraim Savitt.

15 THE COURT: For the defendant Dean Gargagliano?

16 MR. FUTERFAS: Alan Futerfas.

17 THE COURT: For the defendant Santapeola?

18 MR. ROMANO: Vincent Romano.

19 THE COURT: For the defendant Peter Tagliavia?

20 Ms. Newman had called and she was stuck in
21 traffic, so she's somewhat delayed. What I'd like to do
22 this morning is proceed to sentence in these cases. Let me
23 say preliminarily that with some defendants, the Court will
24 have to either upwardly or downwardly depart to accept the
25 11E1C plea agreements that were reached in this case. These

1 were global agreements.

2 I am persuaded from the submissions that have been
3 given to me that it is appropriate to accept those
4 agreements, so unless anyone specifically wants to be heard
5 further, I will just echo some of what you all have put in
6 your written submissions to me as to why I'm doing that when
7 I come to the defendants who particularly require downward
8 departures.

9 To accommodate the Marshals, I would like to
10 sentence as much as possible those defendants who are
11 incarcerated first. So if I could start with Mr.
12 McGlaughlin.

13 Mr. McGlaughlin and Mr. Cutler, do you want to
14 step forward?

15 Mr. Cutler, preliminarily let me ask you, have you
16 had an opportunity to see the presentence report, the
17 addendum to it, the letters written by the government, and
18 to discuss all of these with your client?

19 MR. CUTLER: I have, Your Honor.

20 THE COURT: Mr. McGlaughlin, have you seen the
21 presentence reports in this case, the letter the government
22 has written to the Court and had enough time to talk this
23 all over with your lawyer?

24 THE DEFENDANT MCGLAUGHLIN: Yes, Your Honor.

25 THE COURT: If I understand the correspondence

1 I've received in Mr. McGlaughlin's case, there do not appear
2 to be any factual challenges to the report, is that correct?

3 MR. CUTLER: That's true, Your Honor.

4 THE COURT: And the only legal issue is really
5 this question of departure. Am I also correct on that?

6 MR. CUTLER: Yes, Your Honor, with one caveat. I
7 wanted to indicate we had a general objection to a criminal
8 activity that's been ascribed to Mr. McGlaughlin other than
9 what he's pleaded guilty to either here or in the state
10 court. I'm not contesting it or asking for a hearing. I
11 just wanted to make a general objection to it on the record
12 before you, without going further.

13 THE COURT: But you don't want a hearing.

14 MR. CUTLER: No, I don't, Your Honor.

15 THE COURT: Then I will not adjust the report.

16 MR. CUTLER: I appreciate that.

17 THE COURT: What I had started to say was, Mr.
18 McGlaughlin fits into a category that other defendants today
19 here also do, which is that I have to calculate his
20 guideline level but there is also a question of whether
21 under 5G1.3B that level has to in some way be adjusted to
22 take into account state time for which he will not otherwise
23 be given credit. It appears that the attorneys and the
24 Probation Department are all in agreement that that's
25 appropriate, so that's what I intend to do.

1 MR. CUTLER: Thank you, Your Honor.

2 THE COURT: Let me start, though, with the
3 guideline calculation. I gather in this case there's no
4 challenge to the Probation Department's guideline
5 calculation as the starting point for our discussion, is
6 that correct?

7 MR. CUTLER: That's correct, Your Honor.

8 THE COURT: It appears then that Mr. McGlaughlin
9 has an offense level of 38. With a criminal history
10 category of 2, his guideline range would be 262 to 327
11 months in jail. He faces a 5 to lifetime term of supervised
12 release, a \$25,000 to in excess of seven million dollar fine
13 and \$100 special assessment, the \$100 because there are in
14 fact two counts of conviction. Those are Counts 2 and 9.

15 Is everyone in agreement on that to start?

16 MR. CUTLER: Yes, Your Honor.

17 THE COURT: As of this month, I gather Mr.
18 McGlaughlin has served 41 months of state custody. Is that
19 also correct?

20 MR. CUTLER: Yes, since December 21st of 1992,
21 Your Honor.

22 THE COURT: That would suggest to me that because
23 he will not be given credit for that in the calculation of
24 his federal sentence, that what I should be considering
25 under the guidelines would be a sentence of 221 to 286

1 months, subtracting 41 months from both the low and high end
2 of the guideline range. Everybody agrees with that.

3 MR. CUTLER: Yes, Your Honor.

4 THE COURT: The 11E1C plea in this case provides
5 for 168 months term of incarceration. To agree to that, I
6 would have to depart what is the equivalent of 1 level, to
7 give Mr. McGlaughlin the not inconsiderable credit of 53
8 months. Everyone agrees with that as well.

9 MR. CUTLER: Yes, Your Honor.

10 THE COURT: Let me state my reasons for agreeing
11 to depart. As counsel have pointed out to the Court and as
12 I think is quite correct, this is a very complex case that
13 at one point had so many defendants involved that literally
14 the entire well of the Courtroom was filled. This would
15 have been a complex trial under any circumstance.

16 The decision by Mr. McGlaughlin and so many of his
17 other defendants to plead guilty as part of a global
18 settlement agreement with the government has, while not
19 eliminated the case from the Court's docket, greatly reduced
20 the complexity of trying it.

21 First of all, there were going to have to be at
22 least two trials in this case. This guilty plea eliminated
23 that need, and that's a significant saving of Court
24 resources. And as I said, the fact that so many defendants
25 pleaded guilty as a part of this agreement with the

1 government has greatly streamlined the case.

2 In addition, this Court cannot ignore the fact
3 that this particular case does involve complex and difficult
4 questions raised by the defense concerning a now deceased
5 government informant, Gregory Scarpa, Senior, and the
6 conduct of an F.B.I. agent who supervised him. There is
7 still pending before the Court in the related case the
8 question of what if any inquiry should be made at trial
9 about those matters. But whether I were to allow inquiry or
10 not, the case would be very complex indeed. If I were to
11 allow inquiry, it would expand the case into areas far
12 beyond the simple charges brought. If I were not to allow
13 the inquiry, there would be difficult and undoubtedly
14 vigorously pursued issues on appeal.

15 All of these defendants have eliminated those
16 issues in this case and have accepted responsibility for
17 serious criminal conduct. Mr. McGlaughlin is agreeing to a
18 sentence far in excess of 10 years for his criminal conduct.
19 I think that given the saving of resources and the
20 difficulties presented in this case, justice is adequately
21 done by the 11E1C plea.

22 What I've said as to Mr. McGlaughlin applies
23 equally to other defendants and so, while I may touch on it
24 briefly as it applies to them individually, I won't be
25 repeating this statement as to each defendant.

1 Is everybody satisfied with that?

2 MR. CUTLER: Yes, Your Honor.

3 MS. CORCELLA: Yes, Your Honor.

4 THE COURT: Having said that, I think the only
5 thing to do is to ask you, Mr. Cutler, whether there's
6 anything more you want to be heard on, and particularly let
7 me ask you this, while I'll hear you as to anything you want
8 to say on behalf of your client. Your letter to me does ask
9 that I commence the sentence nunc pro tunc as of April 2nd,
10 1996. I'll hear from the government as to doing that, but
11 if I do it, then don't I have to recalculate the sentence?
12 I wouldn't think it matters much one way or the other, but
13 if there's something I'm overlooking, I'll hear from you.

14 MR. CUTLER: My thought, Your Honor, and Betina
15 Schein's thought, was that when the case was settled back on
16 February 20th of this year, we anticipated -- I was
17 incapacitated at the time, but Ms. Schein anticipated that
18 Tom McGlaughlin would be sentenced six weeks from that
19 point. That was our hope and anticipation. We found out
20 from the Bureau of Prisons through our own efforts and of
21 course the efforts of the Court and the U.S. Department of
22 Probation that Mr. McGlaughlin's federal sentence wouldn't
23 commence until the Court imposed sentence on him, and that
24 would be today, June 28th, 1996.

25 So what I did, Your Honor, was that I tried to

1 couch something in order to catch up for the one, two and
2 three months that I felt Thomas McGlaughlin was losing, not
3 because of any laziness on the part of anybody, but I know
4 the Department of Probation may be overloaded. But the
5 presentence investigation report took a long time in coming.
6 I wanted to make up for that dead time, so to speak, by
7 asking the Court to sentence him as if you sentenced him on
8 April 2nd, so that would save him three months. That's my
9 rationale, Your Honor.

10 MS. CORCELLA: Your Honor, if I may be heard.

11 THE COURT: Yes, Ms. Corcella.

12 MS. CORCELLA: I must disagree with Mr. Cutler in
13 terms of whether this was anticipated at the time of the
14 pleadings or not. It was in fact the government who
15 determined that the defendants would not get credit, even
16 before the defendants signed the plea agreement, until the
17 date of the sentence. I think if the Court recalls, even at
18 the time they took the pleas, it was a subject of
19 discussion.

20 Second, paragraph 4 of the plea agreement
21 specifically anticipated that and eliminated the defendants
22 from being able to request that there be any sort of nunc
23 pro tunc sentence, and I'll read paragraph 4. "The
24 defendant agrees not to file any appeal," and then the
25 second sentence reads, "The defendant further agrees not to

1 seek any reduction of the specific sentence set forth in
2 paragraph 2 or to request that any specific sentence set
3 forth in paragraph 2 commence from any date other than the
4 date required by 18 USC Sections 3585A and B."

5 That particular sentence was negotiated for and
6 was to address this problem, which we anticipated. It was
7 clear at the time of the negotiations that we did not know
8 when the sentencing date would be set, and we as the
9 government were unwilling to negotiate any anticipatory date
10 for sentencing. When the defendant came in to take the
11 plea, I believe the Court specifically told counsel when
12 they asked for as early a date as possible that you would
13 obviously encourage Probation to do the report expeditiously
14 but also properly.

15 I think the Court anticipated that in light of the
16 nature of the case, this would be a complicated report to
17 prepare and provide the Court with all the facts needed to
18 make the decision the Court has made today, which is, at
19 least to Mr. McGlaughlin, to accept the plea.

20 THE COURT: Mr. McGlaughlin, let me emphasize this
21 to you. You've entered into an agreement with the
22 government. I'm prepared to accept it. So I'm not looking
23 for any reasons to aggravate your sentence beyond what was
24 agreed to by the parties. But I'm just looking through my
25 notes to make sure that this Court did not delay the

1 sentence unreasonably, and this is the first sentencing
2 date. This was the date set on the days of the plea, so
3 this isn't a case where I had to move it to accommodate my
4 schedule or anything like that.

5 It seems to me that everybody has worked
6 conscientiously to keep this case on schedule once the pleas
7 were taken, and so I'm not going to make this sentence nunc
8 pro tunc. This was the understanding at the time of the
9 pleas. In fact, I had set this sentencing date on February
10 20th, when some of your codefendants pleaded guilty. When
11 you pleaded guilty on the 21st, you knew this was the likely
12 sentence date, so I don't think there's been any unfairness
13 here.

14 Mr. Cutler, I appreciate your trying to do the
15 best you can for your client, but I'm not going to grant
16 that application.

17 MR. CUTLER: Your Honor, may I touch on another
18 matter?

19 THE COURT: Yes, you may.

20 MR. CUTLER: The other matter is with regard to
21 where Mr. McGlaughlin serves the sentence. There are two
22 issues that I just wanted to raise, with the Court's
23 permission. As the Court well appreciates, Mr. McGlaughlin
24 settled the case by pleading guilty to a narcotics
25 violation, which is basically, in a nutshell, almost the

1 same situation that he had in the state system, virtually
2 the same, not exactly the same.

3 He's serving a 9 to life sentence for the state
4 violation. As a result of that, he's been here since the
5 indictment in April of 1995 on a writ. I wanted to urge the
6 Court to allow Mr. McGlaughlin to serve his sentences, which
7 are going to run concurrently, thank goodness, to serve it
8 in a federal institution. The state will not mind, Your
9 Honor, and I don't mean to be glib about that, because
10 they're overcrowded and they have many problems there.

11 But if he serves the sentence in the federal
12 system and it's running concurrently and the writ that
13 brings him here is just left as is, status quo, so to speak,
14 he will under the law serve it in the federal system.
15 That's what I'm trying to accomplish today, if I can. Since
16 they're running together and the conduct is virtually the
17 same and the allocution is virtually the same, I want to ask
18 the Court to allow him to serve it in the federal system.

19 THE COURT: Ms. Corcella, do you want to be heard
20 on that?

21 MR. CUTLER: There's another caveat, Your Honor.
22 Once we get to that point, I'll mention the other rationale,
23 not to interrupt Your Honor.

24 THE COURT: Go ahead, Mr. Cutler.

25 MR. CUTLER: Is the fact that Thomas McGlaughlin,

1 who is 26 years old -- the two people closest to him in life
2 are his sister and his mother, so I wanted to indicate to
3 the Court through letters that his mother's heart condition
4 is a severe one and she's not permitted to travel great
5 lengths. So I thought and was going to urge the Court to
6 allow Mr. McGlaughlin to serve the sentence federally and
7 hopefully in the northeast region.

8 THE COURT: Where is he now? What state facility
9 is he in?

10 MR. CUTLER: In Greenhaven, in the state's prison.

11 THE COURT: Ms. Corcella?

12 MS. CORCELLA: We take no position about that. I
13 don't know, though, what the mechanics of that would be.
14 I'm not convinced that it's as simple as Mr. Cutler makes it
15 out to be, but otherwise we take no position.

16 THE COURT: I am not going to grant the request
17 that you become a federal prisoner. You've been prosecuted
18 by the state. If the state and federal prison authorities
19 wish to work anything out, they may. But I do think, Mr.
20 McGlaughlin, that in many ways this is a very beneficial
21 agreement to you. Having been sentenced in the state court
22 for what I consider to be serious criminal conduct, some but
23 not all of which overlaps what you're before me on, I'll
24 allow you to continue serving that sentence and then just
25 come over to the federal system.

1 I'll also note that it is in fact the surest way
2 of guaranteeing that your family can visit, because while
3 it's my practice to note on the judgement anyone's desire to
4 be in any part of the country because I don't want to hurt
5 family members, the likelihood that you would serve in the
6 northeast or in the New York metropolitan area given your
7 record is actually probably pretty remote. So your
8 remaining in New York custody is probably the best way to
9 insure that your family can visit you. Otherwise, I have
10 every expectation that you would probably be sent out of
11 this region, even though I would note on the judgement, and
12 I will note on the judgement, that you would like to be here
13 if possible. It's just such an overcrowded region that I
14 know they accommodate very few requests.

15 Mr. Cutler, anything else you'd like to say on
16 behalf of your client?

17 MR. CUTLER: Yes, Your Honor. The final matter
18 that I wanted to broach prior to the Court imposing sentence
19 was the period of supervised release with regard to these
20 crimes. Your Honor, as you can well appreciate, Mr.
21 McGlaughlin hopefully will be paroled from the state system.
22 I say that in the technical term, after serving the 9 years.
23 Notwithstanding that parole, he has a lifetime of parole
24 under the state aegis, so to speak.

25 To save judicial economy, and it made common sense

1 to me, to urge the Court to allow Mr. McGlaughlin or
2 indicate and sentence Mr. McGlaughlin to the minimum -- I
3 think it's 5 years supervisory release, due to the fact that
4 he'll be under the auspices of the state parole and
5 probation system for the rest of his life.

6 So that's why I say to the Court it would be
7 duplicative, in my opinion, if the Court gives a lengthy
8 supervised release under the federal sentencing system,
9 especially since he is going to be sent back to the state
10 initially. We feel, Your Honor, since he is going to have
11 that over his head, so to speak, a sword of Damocles, if you
12 will, that one is enough running with the federal supervised
13 release of the minimum of 5 years rather than longer than
14 that.

15 THE COURT: Ms. Corcella, do you want to be heard
16 on that request?

17 MS. CORCELLA: Again, Your Honor, I think the
18 Court had indicated at the time of the pleas that supervised
19 release is up the Court, and we're going to leave it up to
20 the Court.

21 THE COURT: I have thought long and hard about
22 this. It does seem to me from many things in the report
23 about Mr. McGlaughlin that he would benefit from a longer
24 period of supervised release, but I do not wish to create
25 unnecessary appellate issues here or prolong this

1 litigation. Given what you've said about the fact that he
2 will also be under New York State supervision, it is my
3 intention to sentence him to 5 years supervised release. If
4 you want to be heard any further on that, I will hear you.

5 MR. CUTLER: No, Your Honor.

6 THE COURT: Mr. Cutler, anything else you'd like
7 to say on Mr. McGlaughlin's behalf?

8 MR. CUTLER: No. Thank you for hearing us, Your
9 Honor.

10 THE COURT: Mr. McGlaughlin, you don't have to say
11 anything, but if you'd like to be heard before I impose
12 sentence, I'll be pleased to listen to you.

13 THE DEFENDANT McGLAUGHLIN: No, Your Honor.

14 THE COURT: Mr. McGlaughlin, none of what I'm
15 going to say is a surprise. This is an agreed upon
16 sentence. But I will say this to you. The fact that I
17 accept this sentence and depart downwardly is based solely
18 on my assessment of the case and problems with it. There is
19 nothing about your personal record that would support a
20 downward departure. Indeed, I fully expect that had you
21 gone to trial and been convicted, your guidelines might well
22 have been higher and I would not have hesitated to impose
23 them. Even though you're a very young man, you've
24 basically become a career criminal. I have no idea whether
25 you'll ever be anything else. You're about to spend a very

1 long period in jail.

2 Is your family here today?

3 MR. CUTLER: Yes, Your Honor.

4 THE COURT: This is a terrible thing to do to your
5 family, to have them sit here on a day like this and have to
6 watch this happen. This was not, I'm sure, the dream of
7 your mother as you were growing up. I seriously hope that
8 this will be the last time anybody sentences you.

9 I sentence you on Count 2 to 168 months, the
10 agreed upon sentence. On Count 9, I sentence you to 60
11 months, because that's the statutory maximum. Those
12 sentences will run concurrent to one another and to the
13 state time that you are serving. On Count 2, I thereafter
14 place you on 5 years supervised release, on Count 9, 3 years
15 supervised release, the maximum provided by law. They will
16 run concurrently to one another, for a total of 5 years. I
17 will not impose a fine, since it does not appear that you
18 will have the ability to pay one, particularly given this
19 lengthy period of incarceration. I assess you \$100, \$50 on
20 each of the two counts of conviction. That's required by
21 law.

22 Is there anything else?

23 MS. CORCELLA: The government would move to
24 dismiss the remaining counts of this indictment and move to
25 dismiss the underlying indictments. If it would help the

1 Court, I can state what they are.

2 THE COURT: All of the underlying indictments in
3 the related case against Mr. McGlaughlin are dismissed.

4 Mr. McGlaughlin, I would not think there are any
5 grounds for appeal, but if you wish to appeal, you have ten
6 days to file your notice. Thank you very much.

7 MR. CUTLER: Thank you, Your Honor.

8 THE COURT: Daniel Capaldo. With respect to Mr.
9 Capaldo, I think we are in somewhat the same circumstances.

10 But, Mr. Gold, let me ask you formally for the
11 record, have you seen the presentence report and discussed
12 it fully with your client, and also the addendum and the
13 government's letter?

14 MR. GOLD: Yes, Your Honor.

15 THE COURT: Mr. Capaldo, have you seen these
16 reports prepared about you, seen the government's letter and
17 discussed it all with your lawyer?

18 THE DEFENDANT CAPALDO: Yes.

19 THE COURT: When I said we were similarly situated
20 here, I believe that Mr. Capaldo faces a guideline level
21 that would then require me to give him credit for state time
22 and then consider downward departure, similar to what
23 happened with Mr. McGlaughlin. Let me begin by starting
24 with the guideline calculation level.

25 Is there any challenge to the Probation

1 Department's calculation?

2 MR. GOLD: No, Your Honor.

3 THE COURT: It appears then that the total offense
4 level for Mr. Capaldo is 38. With a criminal history
5 category of 1, his guideline range is 235 to 293 months. He
6 has a 5 to lifetime supervised release as a possibility, a
7 \$25,000 to in excess of four million dollar fine and \$100
8 special assessment.

9 Are we all in agreement as to those guidelines?

10 MR. GOLD: Yes, Your Honor.

11 THE COURT: In Mr. Capaldo's case, he I believe
12 has served as of this month 48 months of a state sentence.

13 MR. GOLD: Actually, Your Honor, as of this coming
14 Tuesday, it will be 49 months. The arrest date was June
15 2nd, 1992.

16 THE COURT: Is that correct, Ms. Corcella?

17 MS. CORCELLA: I will accept his representation.

18 THE COURT: I think that means then that the
19 reduction or the credit for that time, the reduction is
20 really how I should put it, would mean that I would be
21 considering a sentencing range under the guidelines of 186
22 to 252 months.

23 Does everybody agree to that?

24 MR. GOLD: Yes, Your Honor.

25 THE COURT: The agreed upon sentence here is 168

1 months, which means that we would be talking about an 18
2 month departure.

3 MR. GOLD: Correct.

4 THE COURT: For the reasons that I stated in Mr.
5 McGlaughlin's case, I would also be willing to depart
6 downward in Mr. Capaldo's case.

7 Having said that, Mr. Gold, would you like to be
8 heard any further on behalf of your client?

9 MR. GOLD: No, Your Honor. We made substantial
10 submissions to the Court. I would rely on those.

11 THE COURT: I've looked through these and I just
12 want to make sure there's nothing else that you're asking me
13 to consider with sentence that I haven't particularly noted.

14 Anything else?

15 MR. GOLD: No, Your Honor. Again, I'm assuming
16 the Court is of the same mind given that he and Mr.
17 McGlaughlin were similarly situated vis a vis the lifetime
18 parole, so I would have no comments regarding that.
19 Certainly, I would just ask the Court to enforce and impose
20 the Rule 11 plea.

21 THE COURT: Mr. Capaldo, you don't have to say
22 anything, but if you'd like to be heard before I impose
23 sentence, I'd be pleased to listen to you.

24 THE DEFENDANT CAPALDO: No, Your Honor.

25 THE COURT: Ms. Corcella, anything you'd like to

1 add?

2 MS. CORCELLA: No, Your Honor.

3 MR. GOLD: Your Honor, may I just make one brief
4 comment?

5 THE COURT: Please.

6 MR. GOLD: I've been representing Mr. Capaldo now
7 for about 15 months. I would just note that his mother, who
8 is present today and is in essence his only family, has been
9 a stalwart supporter of Mr. Capaldo. I would just like to
10 publicly acknowledge the fact that she has stood behind him
11 and beside him throughout this arduous ordeal, and to
12 express his appreciation, as he has asked me to do, to her
13 in a public manner. Thank you.

14 THE COURT: Mr. Capaldo, I want to first let you
15 know that I have read the submission that Mr. Gold sent me,
16 the letters from many, many people on your behalf, various
17 certificates. I also know about your attempting to earn
18 various degrees while you were in prison and the fact that
19 you've done that quite successfully. That does all operate
20 in your favor.

21 But this plea agreement was entered into because
22 of very serious criminal conduct you've engaged in over the
23 years. So in your case, too, there's no surprise about what
24 I'm going to do. I'll just also mention the fact that I
25 take no pleasure in having to impose this kind of a sentence

1 in front of family. This is not the hope or the dream that
2 your mother had for you. I hope that somehow you'll manage
3 to turn this around and that this will be the last time that
4 anybody has to sentence you.

5 On Count 2 of the indictment, I impose the agreed
6 upon sentence of 168 months. On Count 9, I impose the
7 statutory maximum 60 months. Those terms will run
8 concurrently to one another and to the remaining state term
9 that you have to serve. I thereafter impose 5 years
10 supervised release on Count 2, 3 years supervised release on
11 Count 9. They will run concurrent to one another. I will
12 not impose a fine. It does not appear that you could afford
13 to pay one, particularly with this lengthy term of
14 incarceration. I assess you \$100, \$50 on each of the two
15 counts of conviction, as I'm required to do by law.

16 The outstanding charges with respect to Mr.
17 Capaldo are also dismissed. Is that what the government
18 desires, Ms. Corcella?

19 MS. CORCELLA: Yes, Your Honor.

20 THE COURT: Again, Mr. Capaldo, if you have any
21 basis to think you can appeal any part of the Court's
22 decision, you have 10 days in which to file a notice of
23 appeal.

24 MR. GOLD: Thank you, Your Honor.

25 THE COURT: Because Mr. Savarese is similarly

1 situated with respect to state time, I would take him next,
2 but I promised Judge Amon that I would wait until her break
3 when Mr. Levitt could be freed-up.

4 I'd like to proceed with Larry Sessa next.

5 Mr. Savitt, can I get you to confirm that you've
6 seen the presentence report, the addendum to it, the
7 government letters, and discussed all of these matters with
8 your client?

9 MR. SAVITT: Yes, of course.

10 THE COURT: Mr. Sessa, have you seen the
11 presentence report in your case, the government's letter,
12 and had enough time to discuss this fully with your lawyer?

13 THE DEFENDANT SESSA: Yes, I have.

14 THE COURT: I don't think there are any factual
15 objections to this report, are there, Mr. Sessa? I know
16 there are guideline questions, but are there any factual
17 statements that you're asking to have corrected or changed?

18 MR. SAVITT: We have interposed no objections
19 factually, Your Honor.

20 THE COURT: I think the only legal issue is the
21 question of acceptance of the agreement.

22 MS. CORCELLA: There is one other issue.

23 THE COURT: I'm sorry, go ahead.

24 MS. CORCELLA: With respect to the guideline
25 calculation. I believe the Probation Department did not

1 accept the government's objection.

2 THE COURT: Yes. I was really speaking to
3 generally. I of course will deal with the guideline
4 questions, but there are no other legal issues to resolve
5 before sentencing, is that right?

6 MR. SAVITT: That's correct, Your Honor.

7 THE COURT: There is a 1 level disagreement
8 between the parties in this case, and it deals with the
9 level for the role enhancement in Mr. Sessa's case. The
10 Probation Department recommends a 3 level enhancement. The
11 United States Attorney's Office has suggested that a 2 point
12 enhancement is more appropriate.

13 Is that the basic disagreement?

14 MR. SAVITT: That's the basic disagreement. We
15 agree with the government, Your Honor.

16 THE COURT: I understand. I'm going to accept the
17 government's recommendation. Let me say why. I think the
18 Probation Department is technically correct that Mr. Sessa
19 does come within the guideline level that would warrant the
20 3 point enhancement. But viewing the totality of the
21 conduct that the various defendants participated in in this
22 case, including the defendants' conduct in the crimes of
23 conviction, I'm satisfied that whether I view this as a
24 departure in order to more accurately assign the culpability
25 among the relative players or whether I choose a different

1 guideline, it would be an erroneous aggravation of Mr.
2 Sessa's role to treat him the same way as other persons who
3 are receiving 3 points.

4 So as I said, it may technically be a departure
5 rather than a different guideline, but we will come to the
6 same net result, namely that I will assume before we even
7 get to all of the other factors, that this case would be
8 treated at level 33, simply on its facts. With a criminal
9 history category of 2, I believe that means that Mr. Sessa's
10 guideline range would be 151 months to 188 months. He would
11 then face a 5 year to lifetime term of supervised release, a
12 \$17,500 to in excess of four million dollar fine and \$100
13 order of special assessment.

14 Does everyone agree with that as a starting point?

15 MR. SAVITT: Yes, Your Honor.

16 THE COURT: The 11E1C agreement in this case
17 provides for a sentence of 138 months. To agree to that
18 requires me to basically depart 1 more level, I believe.

19 Is everybody also in agreement with that?

20 MS. CORCELLA: Yes, Your Honor.

21 MR. SAVITT: Yes, Your Honor.

22 THE COURT: For the same reasons that I
23 articulated with respect to Mr. McGlaughlin and Mr. Capaldo,
24 basically reasons that do not relate to Mr. Sessa
25 individually, but rather the complexity and difficulty of

1 this case and the benefits achieved by this settlement, I
2 will depart downward in his case to the agreed upon level.

3 Your client I gather has completed his state
4 sentence and is now purely a federal prisoner, so we don't
5 have any of the adjustments that had to be made in other
6 defendants' cases, correct?

7 MR. SAVITT: The only caveat with respect to that
8 issue, as Your Honor asked me to remind you, and it was
9 reflected in our plea agreement, is that since April 4th of
10 1995 --

11 THE COURT: April 4th of 1995. That's when this
12 sentence would begin to run.

13 MR. SAVITT: That's correct, Your Honor.

14 THE COURT: I am prepared to agree to that. That
15 seems completely accurate.

16 Having said that, Mr. Savitt, is there anything
17 more you'd like to say on behalf of your client?

18 MR. SAVITT: Your Honor, I think everything that
19 has to be said was already said in my submission.

20 THE COURT: You did give me a detailed submission
21 and I want to assure Mr. Sessa that I've read it carefully.

22 Mr. Sessa, you don't have to say anything, but if
23 you'd like to be heard, I'd be pleased to listen to you.

24 THE DEFENDANT SESSA: No, thank you, Your Honor.

25 THE COURT: Ms. Corcella, anything else?

1 MS. CORCELLA: No, Your Honor.

2 THE COURT: Mr. Sessa, you've been in front of me
3 longer than any defendant in this case. You started out as
4 a single defendant in this case. The criminal conduct
5 you've engaged in over the years is disturbing in the
6 extreme, but I'm satisfied that justice is adequately done
7 in your case with this plea.

8 I hope in your case as well that this will finally
9 impress upon you the need to find some other life.

10 I sentence you on Count 2, as agreed to, to 138
11 months in the custody of the Attorney General. That term
12 will be effective as of April 4th, 1995. In other words,
13 you will receive credit for the time, the year and some
14 months you've been in jail as a federal prisoner. On Count
15 9, I sentence you to 60 months. That's the maximum provided
16 by law, and those two terms will run concurrently to one
17 another.

18 On Count 2, I sentence you to 5 years supervised
19 release, on Count 9, to 3 years supervised release. Those
20 terms will run concurrently. I do not impose a fine in your
21 case. I do not think you could afford to pay one. I assess
22 you \$100, as I'm required to do by law.

23 The government moves to dismiss any outstanding
24 counts?

25 MS. CORCELLA: Yes, Your Honor.

1 MR. SAVITT: Your Honor, my only other request is
2 if Your Honor can make a recommendation on the judgement
3 form that Mr. Sessa be designated to a facility nearby to
4 his home. I should note that his mother, his sister and his
5 fiancée are all in the seventh row, the spectators to the
6 Court's right.

7 THE COURT: I don't make recommendations, but I
8 will note that the defendant does ask for it, if he can be
9 accommodated.

10 Mr. Sessa, you heard me tell Mr. McGlaughlin I do
11 this for everybody that asks, because I don't want to hurt
12 anyone's family. But it's such a crowded area that they
13 accommodate very few people. If they can accommodate you, I
14 know it will make things easier for your family, but I don't
15 want to hold out any false hopes.

16 MR. SAVITT: Thank you very much, Your Honor.

17 (Pause in Proceedings)

18 THE COURT: Dean Gargagliano, please.

19 Mr. Futerfas, can you confirm for me that you've
20 seen the presentence report, the addendum to it, the
21 correspondence from the government, and discussed all of
22 this with your client?

23 MR. FUTERFAS: Yes, I have, Your Honor.

24 THE COURT: Mr. Gargagliano, have you seen all of
25 these papers that I just referred to and discussed them

1 fully with your lawyer?

2 THE DEFENDANT GARGAGLIANO: Yes, Your Honor.

3 THE COURT: In this case I believe there are some
4 factual issues. They do relate to guideline calculation.
5 For instance, there is the question about the treatment of
6 the firearm in this case.

7 Mr. Futerfas, do you want to add anything more to
8 your written submission?

9 MR. FUTERFAS: The only thing I want to say is
10 that the government and I agree that I believe it's 3 points
11 -- that the 3 points relating to paragraph 45 of the
12 presentence report with respect to 2E2.1 -- we agree that 3
13 points is applicable and not 4, which I believe is how the
14 Probation report scored it, but we agree for different
15 reasons. I agree and the defense agrees to that because we
16 agree that in relation to the overall crime of extortion,
17 that a firearm was carried and that that would constitute
18 possession under these circumstances. The government
19 apparently is relying -- is agreeing to the same number, but
20 it is relying on an allegation of a pistol whipping or an
21 assault.

22 MS. CORCELLA: That's not correct. We agree for
23 the same reasons.

24 MR. FUTERFAS: Then I stand corrected.

25 MS. CORCELLA: We have repeatedly told Probation

1 that we believe there was an incident of pistol whipping,
2 but since we cannot determine whether that victim was a
3 narcotics customer or a loan sharking customer or whatever,
4 and the offense characteristic specifically says you have to
5 find that it's a loan sharking customer, we are saying that
6 it may be unfair to apply this specific offense
7 characteristic. Therefore, we simply do agree with Mr.
8 Futerfas. We do believe he carried a firearm in connection
9 with the offense.

10 THE COURT: I think the difference is that Mr.
11 Futerfas is disputing whether there was ever any pistol
12 whipping.

13 MR. FUTERFAS: That's correct.

14 THE COURT: Let me say this. I consider that kind
15 of conduct outrageous. But for the plea agreement before
16 the Court, I would probe further into this, because whether
17 this conduct is treated as part of the crime of conviction
18 and therefore enhanced under 2E2.1 or whether it's other
19 conduct that perhaps could be viewed as related because of
20 the overall enterprise here or not, as I said, but for the
21 agreement it's something that I would prove further and if
22 it were desired, I would conduct a hearing.

23 But I assume that because I am prepared to accept
24 the agreement, which would require a downward departure from
25 the Probation Department's guidelines, and so what I'm

1 saying is that I would downwardly depart to accept this
2 agreement if I had to, that if I calculate it as the
3 government and the defense urge me to do so that I come
4 within the guidelines, no one is going to ask me to conduct
5 that hearing one way or the other.

6 Is that satisfactory to everybody?

7 MR. FUTERFAS: It is, as long as the denial is
8 noted, because it is a very strong denial, Your Honor.

9 THE COURT: I'll ask the Probation Department to
10 note that the defendant does deny that he ever pistol
11 whipped anyone, that the Court calculates the guidelines as
12 recommended by the United States because the government
13 could not adduce evidence that the conduct, the alleged
14 pistol whipping, occurred in connection with the extortion.
15 But the Court, because it's prepared to sentence at the
16 agreed upon level, finds it unnecessary to resolve the
17 factual dispute here as to whether anyone was or was not
18 pistol whipped.

19 MR. FUTERFAS: Very well, Your Honor.

20 THE COURT: I believe that resolves the factual
21 issues in dispute. Am I right?

22 MR. FUTERFAS: I think so. The only other issue
23 that we raised in our papers is a minor role. We raised it
24 because I wanted to express to Your Honor that I believed in
25 the overall scheme, the overall enterprise, Mr. Gargagliano

1 had a minor role. However, as we state in a footnote to our
2 papers, the Court may find that no role adjustment is
3 appropriate on the offense of extortion to which he pled.
4 In that case, the guideline calculation would be consistent
5 with the government's.

6 THE COURT: That would be my inclination. If you
7 want a hearing, I'll of course conduct one, but on the
8 record before me, I would not be prepared to aggravate Mr.
9 Gargagliano's role in any way, but I'm not prepared to see
10 it as a minimal one.

11 Do you want a hearing?

12 MR. FUTERFAS: No, Your Honor.

13 THE COURT: Or a minor one, I should say.

14 MR. FUTERFAS: No.

15 THE COURT: Then for the reasons that I've just
16 stated, I would find that the offense level in this case is
17 23. With a criminal history category of 1, the defendant
18 faces a 46 to 57 month term of incarceration, a 2 to 3 year
19 term of supervised release, a \$10,000 to in excess of two
20 million dollar fine and a \$50 order of special assessment.

21 Is everyone in agreement?

22 MR. FUTERFAS: Yes, Your Honor.

23 THE COURT: Mr. Futerfas, if you'd like to be
24 heard any further, I have read your detailed submission, but
25 anything else you'd like to say on behalf of your client?

1 MR. FUTERFAS: There is an explanation for this
2 whole pistol license, how he came to get the license, but I
3 really think in light of the whole case and what we're doing
4 here today, it's not really necessary to go into an
5 explanation and debate with the government about how he got
6 the license, why he got the license. I think it's a very
7 minimal point.

8 The only thing I would request therefore, Your
9 Honor, is two things. First, a recommendation for the
10 northeast region so he can be near his family, as I know
11 Your Honor has done with other defendants. I would ask that
12 there be a recommendation that he not go to a medical
13 facility. Sometimes the BOP takes a look at the medical
14 files on an individual and makes their own determination
15 that he should be in a medical facility. If they did that,
16 they could send him to Rochester or they could send him to
17 Missouri or wherever there is a medical facility. I don't
18 think there's one nearby.

19 So we would recommend that the BOP not send him to
20 a medical facility, that he be sent to the northeast region,
21 with the lowest security level that the BOP would arrive at
22 in his case. And then finally that the Court recommend a
23 drug program or alcohol program, given the obvious problem
24 which presented itself prior to the plea or prior to the
25 disposition of this case. That's all I have. The PSR notes

1 that he's unable to pay a fine. That's accurate. That's
2 all we have, Your Honor.

3 THE COURT: Mr. Gargagliano, you don't have to say
4 anything, but if you'd like to be heard before I impose
5 sentence, I'll be pleased to listen to you.

6 THE DEFENDANT GARGAGLIANO: I just want to thank
7 the Judge for treating me fairly through all of this and for
8 letting me go to Florida to see my grandmother. Thank you.

9 THE COURT: Ms. Corcella, do you want to be heard?

10 MS. CORCELLA: No, Your Honor. I believe we
11 perhaps stated a little more strongly our position with
12 respect to Mr. Gargagliano in a letter we supplied
13 yesterday, but I have nothing further to add on the record.

14 THE COURT: Mr. Gargagliano, in your case, in
15 contrast to the other people I've sentenced this morning,
16 I'm going to be sentencing you to 4 years, not to in excess
17 of 10. So you have a future that is immediately visible to
18 you, as opposed to people who don't see themselves getting
19 out of jail anytime in the near future. I have to tell you
20 that I'm glad you think the Court has treated you fairly,
21 because I'm very disturbed by your criminal conduct,
22 particularly given the fact that you've been a law
23 enforcement officer. In fact, I find it incomprehensible
24 that anybody who ever took the oath as a police officer
25 could engage in the kind of conduct that brings you before

1 this Court.

2 I know you've suffered a personal tragedy, but
3 many people have suffered far worse, many police officers
4 have suffered far worse and turned their lives to productive
5 and indeed sometimes noble purposes. You, by contrast, have
6 engaged in the most ignoble activities that can be imagined.
7 I sincerely hope that many of the good qualities that people
8 have talked about in letters to me, in submissions made by
9 your lawyer, will prevail, and that this will be the last
10 time you're before anybody.

11 I sentence you to the custody of the Attorney
12 General, as agreed to, to 48 months. I thereafter place you
13 on 3 years supervised release. I will not impose a fine in
14 your case because as I understand it, you've incurred a debt
15 to your family to pay for the legal fees in this case. I
16 will make it a special condition of your supervised release
17 that during the time of your supervised release, you make a
18 good faith effort to pay back your father for the fees that
19 have been paid in this case. These weren't the dreams of
20 your family for you and they have, I assume, gone
21 substantially into debt or given up a lot of their savings
22 in order to deal with your circumstances here. I also
23 assess you \$50 because I'm required to do it by law.

24 Ms. Corcella, did I misspeak on something?

25 MS. CORCELLA: I believe he also pled guilty to

1 Count 9. All of the defendants pled guilty to Count 9,
2 except for --

3 THE COURT: I'm sorry, 48 months on Count 5, 48
4 months on Count 9. It runs concurrently. 3 years
5 supervised release on each count. It also runs
6 concurrently. It's \$100 special assessment because I must
7 impose \$50 on each count of conviction.

8 Is there anything else?

9 MS. CORCELLA: The government moves to dismiss the
10 underlying counts.

11 THE COURT: With respect to the recommendations
12 sought, I don't make recommendations. I only note on the
13 judgement for the Bureau of Prisons' consideration the fact
14 that the defendant would like to be sentenced in the
15 northeast region if that's possible, and does not think that
16 he needs designation to a medical facility. Ultimately,
17 that's the Bureau of Prisons' decision, because they have
18 the responsibility for your health, but I will note right on
19 the judgement that you're asking not to go to a medical
20 facility.

21 As far as the drug program goes, I have no reason
22 to think in your case that this is anything other than a
23 genuine request, but of late, people have found out that
24 they can get some benefits by participating in drug
25 treatment and rehabilitation and I have people who've never

1 admitted to taking drugs on drug rehabilitation. I'll note
2 that you're asking for it. I won't specifically recommend
3 it. As I said, I have no reason to think that in this case,
4 it's anything other than genuine. Thank you very much.

5 THE COURT: I'm told your client is still not
6 here, Mr. Kaiser.

7 Joseph Santapeola. This matter also involves a
8 presentence report, an addendum to it and correspondence
9 from the government.

10 Counsel, have you seen it and gone over all of it
11 with Mr. Santapeola?

12 MR. ROMANO: I have, Your Honor.

13 THE COURT: Mr. Santapeola, have you seen all of
14 these documents from the Probation Department and from the
15 U.S. Attorney's Office and had enough time to talk them over
16 with your lawyer?

17 THE DEFENDANT ROMANO: Yes, Your Honor.

18 THE COURT: In this case, I know that there's an
19 objection to the loss attributed to the defendant, but I'm
20 not sure that it has any practical purpose except with
21 respect to the fine level in this case. I can deal with
22 that at the appropriate time. I think even the government
23 suggests that I calculate that with reference to about a
24 half million dollar loss, rather than a loss far in excess
25 of a million dollars.

1 If I do that, is that satisfactory?

2 MR. ROMANO: It is, Your Honor.

3 THE COURT: Are there any other factual statements
4 in the report to which the defense wishes to take exception?

5 MR. ROMANO: No, Your Honor. We raised various
6 objections to the presentence report --

7 THE COURT: Right, but I don't think any of the
8 others relate to the facts in the report, do they?

9 MR. ROMANO: That's correct.

10 THE COURT: Other than guideline calculation, I
11 don't think there are any other legal issues to resolve, are
12 there?

13 MR. ROMANO: No, Your Honor.

14 THE COURT: There is of course in this case a
15 difference between the government's guideline calculation
16 and that of the Probation Department. The Probation
17 Department, as I said, uses a million five as the amount of
18 tax evasion. The government suggests that I use the figure
19 of a little over a half a million dollars for purposes of
20 calculating the loss.

21 Having reviewed all of the submissions by the
22 parties, I do think this more accurately reflects Mr.
23 Santapeola's accountability for the criminal conduct.
24 Whether this is appropriately viewed as a difference in
25 guideline calculation or a departure, I am prepared to start

1 with that as our sentencing figure, and I also gather we'll
2 be using two kilograms of cocaine to calculate this.

3 Is that agreeable to everybody?

4 MR. ROMANO: Yes, Your Honor.

5 THE COURT: That would mean that Mr. Santapeola
6 would start with a guideline level of 19 and a criminal
7 history category of 1. This would give him a guideline
8 range of 30 to 37 months in jail, a \$10,000 to approximately
9 one million dollar fine, a 2 to 3 year term of supervised
10 release and a \$100 special assessment.

11 In this case, the 11E1C agreement is to 24 months
12 in jail. To agree to this, I would have to depart 2 levels.
13 For the reasons I've stated with other defendants which
14 relate to the case, not to the defendant individually, I
15 would be prepared to accept this.

16 MR. ROMANO: Yes, Your Honor.

17 THE COURT: Having said that, Mr. Romano, is there
18 anything more you would like to say on behalf of your
19 client?

20 MR. ROMANO: Yes, Your Honor. At the appropriate
21 time, I'd like to ask as far as sentencing is concerned --
22 my client is interested in the intensive supervision
23 program, the shock incarceration program for Mr. Santapeola,
24 and I could list the various reasons if you want me to go
25 into it now. In the presentence report, it indicates his

1 inability to pay a fine. It lists his assets and his
2 liabilities on a monthly basis, the fact that he supports
3 three children from a previous marriage and is re-married
4 and has one child from his new marriage.

5 As far as the shock incarceration program which my
6 client is eligible for and fits the conditions for under
7 Title 18, based on his age, his criminal history, the fact
8 that he has never been incarcerated or arrested on any other
9 matter, his educational background, which I submit to Your
10 Honor is minimal, and he could actually benefit from the
11 vocational skills that this program offers. He has a stable
12 mental and emotional condition. His physical condition is
13 well. As stated in the presentence report, all the work
14 he's ever done has been as a truck driver, as a garbage
15 truck driver, as a long hauler for various companies. He's
16 always engaged in -- I would describe it as hard working,
17 labor intensive work.

18 He has strong family ties in the community. His
19 wife is here, his friends are here, his mom is here in the
20 Courtroom. They're all very concerned about this. He is a
21 category 1 of a criminal history. There are various
22 dependents, three very small children, as well as a 20 month
23 old baby, who all depend on Mr. Santapeola for their
24 livelihood, for their support, for their continuing
25 wellbeing. That's my application to Your Honor as far as

1 the intensive supervision program is concerned.

2 THE COURT: Before I ask Mr. Santapeola if he
3 wishes to be heard, Ms. Corcella, do you have any position
4 on that?

5 MS. CORCELLA: No, Your Honor.

6 THE COURT: Mr. Santapeola, you don't have to say
7 anything, but if you'd like to be heard on your own behalf,
8 I'll be pleased to listen to you.

9 THE DEFENDANT SANTAPEOLA: No, Your Honor.

10 THE COURT: Do you understand what the intensive
11 incarceration program is? You have no freedom. You're like
12 up at 6:00, your whole day is regimented. It's like going
13 into the Marines. Do you understand that?

14 THE DEFENDANT SANTAPEOLA: Yes, I do, Your Honor.
15 I was informed about the program through my lawyer, and I
16 just feel that it would -- I would be able to be
17 rehabilitated a little quicker going through the shock
18 program and put my life back into perspective, where I can
19 still take care of both my families.

20 THE COURT: Is there anything more that the
21 government wishes to be heard on?

22 MS. CORCELLA: No, Your Honor.

23 THE COURT: Mr. Santapeola, the only reason I
24 would consider putting you in the intensive incarceration
25 program is so that you could get out sooner and support your

1 family. There are four children who depend on you, and I
2 recognize that your absence will have some consequences for
3 them, not only financially, but I would hope at some point
4 you would recognize that your children need a real and
5 serious role model.

6 You have a 12 year old son, I believe, isn't that
7 right?

8 THE DEFENDANT SANTAPEOLA: 14, Your Honor.

9 THE COURT: You know what kind of temptations are
10 going to face him in the years ahead, and I would hope you'd
11 want better for him than what you've had. The only way for
12 him to have any chance in that regard is if someone is
13 constantly giving him some reason to live a life other than
14 the ones he'll be tempted to live. I'm going to take this
15 chance on you, but there will be conditions.

16 I also have to tell you that I think this is a
17 limited resource, this shock incarceration program, so I
18 have no interest in putting people in it who aren't going to
19 succeed in it. I know you're going to succeed in it,
20 because I actually think that you're not the kind of person
21 who lacks the self discipline. You don't need the
22 rehabilitation. You need to have something click in your
23 own mind where you turn from this track to a completely
24 different lifestyle.

25 You're going to be on supervised release with

1 conditions. If there are any violations, I can assure you
2 I'll view what I do today as lenient and you will not see
3 that leniency a second time.

4 Do you understand that?

5 THE DEFENDANT SANTAPEOLA: Yes, I do.

6 THE COURT: I will sentence you to the custody of
7 the Attorney General for a period of 24 months. Let me make
8 clear what I'm doing here. That's 24 months on Count 5 and
9 24 months on Count 9, the terms to run concurrent to one
10 another. I thereafter place you on 3 years supervised
11 release. It is a special condition of your supervised
12 release that you continue to support all 4 of your children
13 and that you maintain gainful and lawful employment. If you
14 do not maintain gainful and lawful employment, I will
15 consider that a violation of your supervised release, or if
16 you don't support your family I'll consider it a violation
17 of your supervised release and I'll put you back in jail,
18 because that's the only reason I'm showing you leniency.

19 I won't impose a fine because with these financial
20 demands on you, I don't think you could afford to pay one,
21 but I assess you \$100, as I'm required to do by law, \$50 on
22 each of the two counts of conviction. I will recommend you
23 for the intensive incarceration program. Usually, the best
24 way to go into one of those programs is if we can find when
25 the next one is and if Mr. Santapeola surrenders directly to

1 it.

2 Have you made any inquiry along those lines, Mr.
3 Romano?

4 MR. ROMANO: I haven't, Your Honor.

5 THE COURT: I will set a surrender date, but I
6 will be willing to amend it. If Mr. Santapeola is accepted
7 into one of the intensive incarceration programs, he'll go
8 in on that date, the program date, instead of the date I'm
9 setting. I'm going to pick a date approximately 2 months
10 from now. I will look to you, counsel, to work out with the
11 Probation Department whether your client is going to be
12 accepted into the incarceration program.

13 Mr. Santapeola, I recommend you and that
14 recommendation does count for something, but in the end, you
15 have to be accepted by the Bureau of Prisons. If they do
16 not accept you into the program, then you have to surrender
17 on the date I set to general prison population, and you'll
18 serve 2 years.

19 Do you understand that?

20 THE DEFENDANT SANTAPEOLA: Yes, Your Honor.

21 THE COURT: Mr. Taveras, a surrender date
22 approximately 2 months from now.

23 THE CLERK: August 26th, Your Honor.

24 THE COURT: August 26th, that's a Monday, by noon
25 to whatever facility, and the alternative is if you find out

1 that he's accepted to another program and it has a starting
2 date either before or after, then I'm to be notified and
3 I'll amend the order for surrender.

4 MR. ROMANO: I will, Judge. He would like to go
5 in and start as soon as possible.

6 THE COURT: As I said, if you can find out if
7 there's a program starting this summer, then that's what
8 will happen.

9 MR. ROMANO: I'll check into it.

10 THE COURT: If he's not accepted into the program
11 and he wants to surrender sooner, I'll oblige him in that as
12 well.

13 The sooner you get this all over with, the better it is
14 for you and your family.

15 Anything else?

16 MS. CORCELLA: We'd move to dismiss any underlying
17 counts.

18 THE COURT: That's granted.

19 Has Ms. Newman arrived yet? Yes. Thank you.

20 I didn't see you, Ms. Newman. I'm sorry.

21 Peter Tagliavia.

22 Ms. Newman, were you here during the time that I
23 discussed with other counsel the 11E1C pleas and my decision
24 to accept them?

25 MS. NEWMAN: Yes.

1 THE COURT: The difference for your client is that
2 your client is in a position where acceptance of the plea
3 would require an upward departure from his guideline
4 calculation rather than a downward departure. It does seem
5 to me on the facts and circumstances of the case here that
6 allowing Mr. Tagliavia to plead to extortion and not to any
7 other possible crimes does confer some benefit on him and is
8 one of the reasons that his guidelines are as low as they
9 are.

10 It would be possible, as I've said to other
11 defendants, for me to consider other conduct as related to
12 an overall enterprise here. That would more than support
13 upward departure in his case.

14 As I said, he's uniquely situated. He's the only
15 person who would be sentenced to a term of incarceration
16 higher than his guidelines rather than lower.

17 Have you discussed all of this with him and does
18 he wish to stand by the plea agreement?

19 MS. NEWMAN: Yes, Your Honor.

20 THE COURT: Mr. Tagliavia, is that correct? You
21 wish to stand by the plea agreement, knowing that you're
22 going to be sentenced to a considerably higher term than
23 your guideline level?

24 THE DEFENDANT TAGLIAVIA: Yes.

25 THE COURT: Having started with that

1 preliminarily, Ms. Newman, can you confirm for me that
2 you've seen the presentence report, the government's letters
3 and discussed all of these with your client?

4 MS. NEWMAN: Yes, Your Honor.

5 THE COURT: Mr. Tagliavia, you've discussed the
6 presentence report and the government's letters fully with
7 Ms. Newman?

8 THE DEFENDANT TAGLIAVIA: Yes, I have.

9 THE COURT: Are you satisfied with the help she's
10 given you so far?

11 THE DEFENDANT TAGLIAVIA: Yes, I am.

12 THE COURT: I don't believe there's any challenge
13 to the Probation Department's guideline calculation, is that
14 correct?

15 MS. NEWMAN: That's correct, Your Honor.

16 THE COURT: Or to the facts or statements
17 contained in the Probation report?

18 MS. NEWMAN: Yes, Your Honor, as a matter of fact,
19 there are.

20 THE COURT: I do have your letter.

21 MS. NEWMAN: I outlined some corrections, some
22 factual corrections. In paragraphs 2, 27 and 81, the
23 presentence report indicates that there were 3 kilograms of
24 cocaine seized from Mr. Tagliavia's apartment. In fact,
25 it's my understanding from the discovery that there was just

1 under a kilogram. I've confirmed this with the government.

2 THE COURT: Is that correct, that there was 1
3 kilogram seized? Your letter said that your client thought
4 there was only kilogram, so I wasn't sure whether he just
5 misunderstood how much had been left with him.

6 MS. CORCELLA: In going over these I forgot to
7 inform the Court. That is correct. There were 6 1/8 keys
8 of cocaine, so it was just under 1.

9 THE COURT: It's not going to make any difference
10 to this Court's sentencing decision, but we've gotten that
11 clarified. I'll ask the Probation Department to correct the
12 report to indicate that it was approximately a kilogram
13 rather than 3 kilograms that was seized. I am prepared to
14 accept your representation that he wasn't paid by his uncle
15 when he was a high school student, so you can accept that.

16 With an offense level of 15 and a criminal history
17 category of 1, the defendant faces an 18 to 24 month term of
18 incarceration under the guidelines, a 2 to 3 year term of
19 supervised release and a \$50 special assessment. Because of
20 related criminal conduct, though, I am prepared to depart
21 upward to the 48 months that was the agreed upon 11E1C
22 sentence.

23 Having said that, Ms. Newman, I'll hear you as to
24 anything you'd like to say on your client's behalf.

25 MS. NEWMAN: In my letter that I know Your Honor

1 has reviewed of June 26th, 1996, I bring up two other issues
2 or three other issues, actually. We would request a
3 downward departure for the supervised release. I can wait
4 until after to comment.

5 THE COURT: I'll be happy to hear you on it, but
6 I'm very disinclined to do that. With the individuals who
7 were in this enterprise, I do think they need some
8 supervision after they come out of jail to insure that any
9 temptations they might face not be succumbed to.

10 MS. NEWMAN: I think Mr. Tagliavia is somewhat
11 unique in light of the fact that he has in effect been out
12 of jail for 4 years since the crimes that have been alleged
13 here. His life has been one in which he's worked very hard.
14 He's been on electronic monitoring for 1 year and going to
15 rehabilitation for 1 year, all of which he has received
16 praise for. He has worked very hard, although it's a new
17 business and unfortunately hasn't earned a great deal of
18 money, but he wanted to do something on his own,
19 particularly in light of the fact that he will be out of
20 prison in less than 4 years.

21 -- comes from a very closeknit family --

22 THE COURT: I'm sorry, we have to change tapes.

23 (Tape is being changed)

24 THE COURT: Go ahead.

25 MS. NEWMAN: Just to back up, Your Honor, my

1 client has worked very hard over the 4 years since the
2 offense conduct. In fact, recently he opened up his own
3 business, his construction business, and has worked hard on
4 that, although as a new business, he has not earned a great
5 deal of money. He has done that with a purpose, because he
6 sees a future for himself. He knows he can come back to
7 that. That is why he has done that. I think that shows
8 where his mind is, where his intent is, to work hard.

9 He has plans to be married. His fiancée is in the
10 audience, as is his father, his two aunts and his uncle.
11 They have been here consistently. He has a very closeknit
12 family. He still lives at home, and but for nine months
13 when he lived with a friend, he has always lived at home.
14 His family functions have been the significant part of his
15 life growing up and continue to be so. I am sure Your Honor
16 is aware that the only time he asked to be relieved of the
17 conditions of electronic monitoring was in fact to attend a
18 family function. I think that shows the support that he has
19 and has maintained.

20 Pretrial has gone and interviewed the family and
21 concurs with that, that this is a closeknit family, a family
22 in which the father is involved in law enforcement. To say
23 that this is a disappointment, that this is very upsetting
24 to the family, goes without saying. But I also believe that
25 it's been very upsetting to Mr. Tagliavia, and he has

1 changed considerably.

2 One also has to consider how he got involved in
3 this to begin with. He was addicted to cocaine, as he
4 readily admits in his admissions to Probation. He said, I
5 didn't realize it at the time, but now that I've been
6 involved in rehabilitation and I've been educated, I
7 recognize that I had an alcohol problem, I recognize that I
8 had a cocaine problem. But it's also significant that as
9 soon as he was arrested, before starting rehabilitation, on
10 his own, he stopped all consumption.

11 I don't know if he would have characterized it as
12 an addiction, but through the education he now recognizes
13 that it was an addiction, and he's gone a long way. So what
14 I'm saying is, I don't know that supervised release in this
15 case is necessary, or if it is, Your Honor, if you consider
16 that it is, I believe it should be minimal.

17 THE COURT: Ms. Newman, while I appreciate your
18 attempts as an advocate to do the best you can for your
19 client, actually everything you've said suggests to me that
20 he's exactly the kind of candidate who needs supervision,
21 particularly if drugs played a part. It's too easy to lapse
22 back into drugs and all the problems that go with it. I'm
23 not looking to punish Mr. Tagliavia any more than necessary,
24 but I do think he needs some supervision when he finishes
25 his prison term.

1 Is there anything else?

2 MS. NEWMAN: Yes. I also have asked the Court to
3 consider recommending a drug treatment program. I know that
4 there is one in Fairton (ph.) that's currently running. In
5 light of the fact that he's gone through the rehabilitation
6 through Probation, and I have spoken with Fairton, they
7 would consider him a candidate. Being a first time
8 offender, being the fact that he was involved in a
9 rehabilitation program while he was on bail --

10 THE COURT: I'll note on the judgement that he's
11 requesting consideration for a drug rehabilitation program.

12 MS. NEWMAN: Also, I would of course recommend
13 that he be designated in the northeast region. Lastly, I
14 would ask Your Honor to allow him to voluntarily surrender.
15 I believe that his record on bail would support this.

16 THE COURT: How soon is he ready to do that?

17 MS. NEWMAN: One month, Your Honor?

18 THE COURT: He wants to surrender to the
19 designated institution?

20 MS. NEWMAN: Yes, or as soon as they designate. I
21 have indicated to him that it generally takes about a month.
22 That's been my experience, and that's fine, as soon as he's
23 designated.

24 THE COURT: Let me ask the government's its views
25 on that.

1 Do you have any position on voluntary surrender in
2 this case?

3 MS. CORCELLA: In light of the fact that he has
4 been absolutely no problem as far as I can recall on
5 electronic monitoring, there's probably convincing evidence
6 that he would not be a flight risk.

7 THE COURT: Is that it, Ms. Newman?

8 MS. NEWMAN: Yes.

9 THE COURT: Mr. Tagliavia, you don't have to say
10 anything, but if you'd like to be heard before I impose
11 sentence, I'll be pleased to listen to you.

12 THE DEFENDANT TAGLIAVIA: No, Your Honor.

13 THE COURT: Anything else, Ms. Corcella?

14 MS. CORCELLA: No, Your Honor.

15 THE COURT: Mr. Tagliavia, the agreed upon
16 sentence is the one I will impose in your case, because I
17 think the totality of your criminal conduct more than
18 warrants it. I sentence you to the custody of the Attorney
19 General on the single count of conviction to 48 months. I
20 thereafter place you on 3 years supervised release.

21 As special conditions of your supervised release,
22 you will be required to continue to participate in either
23 drug counselling or rehabilitation, if the Probation
24 Department thinks it would be of assistance to you. It may
25 be that after your time in jail, if you've completed a

1 program there, that you won't need that help or support
2 anymore, but I just think that this is part and parcel of
3 your problem, and so any bit of help that can be given to
4 you to make sure you don't go back on that track is
5 important.

6 It's further a special condition of your
7 supervised release that you seek and maintain lawful
8 employment. It's the best way to ensure that you don't go
9 back into this particular type of life. I won't impose a
10 fine at this time. I don't think you could afford to pay
11 one. I assess you \$50, as I'm required to do by law.

12 MS. CORCELLA: I believe there are open counts to
13 dismiss.

14 THE COURT: I will grant their dismissal now. I
15 will allow Mr. Tagliavia to voluntarily surrender.

16 Mr. Taveras, can you give me a surrender date in
17 approximately a month to six weeks?

18 THE CLERK: July 29th, Your Honor.

19 THE COURT: July 29th, which is a Monday, by noon.

20 Ms. Newman, I'll look to you to find out from the
21 Marshals when he's been designated. The designation will
22 probably be relatively soon.

23 I gather the government does not think there's any
24 need to reconsider the conditions of bail in light of this.

25 MS. CORCELLA: Your Honor, I realize he's going in

1 for a serious amount of time for a serious offense. I am
2 convinced that he has not posed any problem.

3 THE COURT: I'll note on the judgement that if
4 there's space available, you're asking for consideration in
5 the northeast region. If they think you're eligible, you're
6 looking to participate in a drug rehabilitation program. I
7 hope you and your family heard me tell other people that
8 I'll recommend this for anybody from the northeast region,
9 but it's a very crowded area. I don't know if they'll grant
10 it to you. I have to warn you about that right now.

11 THE COURT: United States versus Joseph Savarese.

12 Mr. Savarese, your attorney of record, Mr. Levitt,
13 is on trial right now before another judge in this building,
14 Judge Amon. I am prepared to wait for him if you would like
15 Mr. Levitt here. But Mr. Kaiser, who has covered for him at
16 many appearances in this case, has indicated he would be
17 prepared to go forward with you, if you're comfortable with
18 that. The choice is yours.

19 THE DEFENDANT SAVARESE: I'd like to go forward,
20 Your Honor.

21 THE COURT: In this case, I've received a
22 presentence report on you, the government correspondence.

23 Have you seen all of this, Mr. Kaiser, and
24 discussed it fully with your client?

25 MR. KAISER: I have, Your Honor.

1 THE COURT: Mr. Savarese, have you had enough time
2 to discuss these reports and the government's letter with
3 Mr. Kaiser?

4 THE DEFENDANT SAVARESE: Yes, Your Honor.

5 THE COURT: Do you need any more time?

6 THE DEFENDANT SAVARESE: No.

7 THE COURT: In this case, I know there are
8 disagreements between the government and the Probation
9 Department with respect to the role that should be assigned
10 to Mr. Savarese, and that affects the guideline calculation.
11 There is also a question about giving him credit for time
12 that he has served in state custody, which I'm prepared to
13 do. Depending on how I resolve the dispute about role, I
14 either do or do not need to depart to reach the 11E1C term
15 of incarceration provided here.

16 Let me ask, other than the dispute about role, are
17 there any other factual challenges to the report?

18 MR. KAISER: There are none, Your Honor.

19 THE COURT: Here again, I think that the Probation
20 Department is technically correct, but that the government,
21 in asking me to look at the totality of the activities of
22 this enterprise, is perhaps also correct in suggesting that
23 a 2 rather than 3 level enhancement would more accurately
24 reflect Mr. Savarese's role. Whether I view this as a
25 different guideline or a departure itself, I'm prepared to

1 treat him as having the equivalent role of a 2 point
2 enhancement rather than 3.

3 Is that satisfactory to everybody?

4 MR. KAISER: It is, Your Honor.

5 THE COURT: I believe that means then that with a
6 total offense level of 33 and a criminal history category of
7 5, Mr. Savarese faces a 210 to 240 month term of
8 incarceration. 210 to 262, because though there is a 20
9 year maximum on the one, I could run it consecutively to
10 reach the guideline level. So the guideline range is 210 to
11 262 months.

12 That would then be followed by a 2 to 3 year term
13 of supervised release, because this is simply the
14 racketeering charge, am I right?

15 MS. CORCELLA: That's correct, Your Honor.

16 MR. KAISER: Although I know he will be on
17 lifetime supervision from the state, Your Honor.

18 THE COURT: But I'm just talking about the federal
19 guidelines. He then faces a \$17,500 to in excess of three
20 million dollar fine and a \$50 order of special assessment.

21 Everybody agrees to that?

22 MR. KAISER: Correct.

23 THE COURT: I'm told that Mr. Savarese has as of
24 this month served 54 months of his state custody, is that
25 correct?

1 MR. KAISER: Yes, Your Honor.

2 THE COURT: That would mean that because he would
3 not otherwise receive credit for that on the federal
4 sentence, that I would treat his sentencing as really more
5 appropriately 156 months to 186 months.

6 Everyone agrees to that?

7 MS. CORCELLA: I think you're capping it out at --

8 THE COURT: You're right, I had done the 20 years
9 again. It's 156 to 208 months.

10 Everyone agrees?

11 MR. KAISER: Correct.

12 THE COURT: The 174 month agreed upon 11E1C term
13 is within that guideline range, so I would not need to
14 depart. I would say that even if this case were more
15 appropriately calculated as the Probation Department
16 recommended, I would be prepared to give the 7 month
17 downward departure for the reasons I've stated with respect
18 to other defendants, Mr. Savarese, which is that these pleas
19 by you and your codefendants avoided the need for multiple
20 complex trials and avoided the need for litigation in this
21 Court or other courts of complex issues about the conduct of
22 Gregory Scarpa, Senior and possibly agents of the F.B.I.

23 Having said all that, Mr. Kaiser, is there
24 anything more you'd like to say on behalf of Mr. Savarese?

25 MR. KAISER: Nothing further, Your Honor, except

1 that just that we wish that you impose the 11E1C plea, that
2 you make the standard recommendation for housing in the
3 northeast at the conclusion of his at least 8 more years in
4 state custody. Additionally, we note that the PSI also
5 recommends that it does not appear he has the ability to pay
6 a fine.

7 THE COURT: Mr. Savarese, you don't have to say
8 anything, but if you'd like to be heard, I'd be pleased to
9 listen to you.

10 THE DEFENDANT SAVARESE: Thank you.

11 THE COURT: Ms. Corcella, anything else?

12 MS. CORCELLA: No, Your Honor.

13 THE COURT: Mr. Savarese, the 11E1C plea in your
14 case is the highest of the group of defendants I'm
15 sentencing this morning. You face a term of 174 months in
16 jail. This reflects both your serious criminal conduct on
17 the crime of conviction and your extraordinary criminal
18 history. I don't know if anything will persuade you to
19 change the life you've led, but your are going to be almost
20 an old man by the time you get out of jail. With whatever
21 time you have left, I hope that you'll decide that this
22 constant back and forth into jail is not what you want left
23 with the rest of your time.

24 I sentence you as agreed upon by the parties to
25 174 months in jail. That will run concurrent with the

1 remainder of your state time.

2 MR. KAISER: Your Honor, can I interject? Can we
3 specify in the J and C the state sentence, number 7 of 92
4 from Richmond County. Can that go in the J and C?

5 THE COURT: Is that the one?

6 MS. CORCELLA: Yes. Whatever is in the plea
7 agreement.

8 THE COURT: I don't have a copy of the plea
9 agreement, so if you provide that to Mr. Taveras, I'll note
10 it, because I think you're just trying to avoid any kind of
11 bureaucratic mix-up, Mr. Kaiser.

12 MR. KAISER: Exactly, Your Honor.

13 THE COURT: So I will put it on the judgement in
14 this case to try to avoid anything like that. I impose a 3
15 year term of supervised release. I will not impose a fine.
16 Mr. Savarese is going to be in jail for a long time and I
17 have no expectation that he could pay a fine. I assess you
18 \$50 because I'm required to do that by law.

19 Ms. Corcella, the same application?

20 MR. KAISER: I think it's \$100, Your Honor.

21 THE COURT: I'm sorry, \$100? They've changed it,
22 but it's only one count.

23 MS. CORCELLA: He just pled to one count.

24 THE COURT: It's two predicate acts, but only one
25 count.

1 The one count you've moved to dismiss, and that's
2 granted. Just make sure Mr. Taveras gets the docket number
3 that he needs for the state crime.

4 MR. KAISER: Thank you, Your Honor.

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I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in
the above-entitled matter.

A handwritten signature in black ink, appearing to read 'EB', with a long horizontal stroke extending to the right.

ELIZABETH BARRON

August 19, 2011